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HOUSE BILL 281

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING CONDITIONS FOR ACCESS
BY A TELECOMMUNICATIONS PROVIDER ON PRIVATE PROPERTY FOR USE BY
A TENANT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico
Telecommunications Act is enacted to read:

"NEW MATERIAL DISCRIMINATION PROHIBITED-- CONDITIONS--
ENFORCEMENT. --

A. A private property owner shall not:

(1) prevent or otherwise interfere with the
installation of a telecommunications service facility by a
public telecommunications service provider for use by a tenant
on the owner's property;

(2) discriminate in the terms, conditions or

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1 compensation imposed for the installation of a
2 telecommunications service facility by a public
3 telecommunications service provider or use of such facility by
4 a tenant on the owner's property;

5 (3) demand or accept an unreasonable payment
6 from a tenant or a public telecommunications service provider
7 for allowing the provider access to the owner's property; or

8 (4) discriminate in favor of or against a
9 tenant, including rental charge discrimination, because of the
10 tenant's choice of public telecommunications service provider
11 from which the tenant receives a public telecommunications
12 service.

13 B. A private property owner may:

14 (1) impose a condition on the public
15 telecommunications service provider that is reasonably
16 necessary to protect:

17 (a) the safety, security, appearance or
18 condition of the property; or

19 (b) the safety or convenience of other
20 persons;

21 (2) impose a reasonable limitation on the time
22 at which the public telecommunications service provider may
23 have access to the property to install and perform routine
24 maintenance on a telecommunications service facility; provided,
25 however, that the public telecommunications service provider

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1 shall have continual, uninterrupted, twenty-four-hour-per-day
2 access to perform repairs to a telecommunications service
3 facility in the event of a service interruption;

4 (3) impose a reasonable limitation on the
5 number of public telecommunications service providers that have
6 access to the owner's property, if the owner can demonstrate a
7 space constraint that requires the limitation;

8 (4) require the tenant or the public
9 telecommunications service provider to agree to indemnify the
10 owner for damage to the owner's property caused by the
11 installation, operation or removal of a telecommunications
12 service facility;

13 (5) require the tenant or the public
14 telecommunications service provider to bear the cost of the
15 installation, operation or removal of a telecommunications
16 service facility; and

17 (6) require the public telecommunications
18 service provider to pay compensation for access to and use of
19 the owner's property that is reasonable and does not
20 discriminate among providers.

21 C. The commission has the power and authority to
22 enforce this section.

23 D. In considering whether compensation demanded by
24 a property owner is reasonable, the commission shall consider
25 the costs to the property owner of permitting installation of a

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1 telecommunications service facility on the owner's property.

2 E. For purposes of this section:

3 (1) "private property owner" means

4 (a) a person other than a governmental
5 agency holding fee simple title to real property and
6 improvements to real property; or

7 (b) an agent, representative, employee
8 or assignee of the fee simple title holder in matters related
9 to the use of such property;

10 (2) "public telecommunications service
11 provider" means a person that holds a certificate of public
12 convenience and necessity to provide public telecommunications
13 service within the state and its agents, subcontractors and
14 representatives; and

15 (3) "telecommunications service facility"
16 means all property used in connection with the provision of
17 telecommunications service. "